

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR.,)	C.A. NO. 04-297 ERIE
Plaintiff)	District Judge McLaughlin
V.)	
)	
CITY AND COUNTY OF ERIE,)	
ET AL.)	
Defendants.		

MOTION FOR SUMMARY JUDGMENT

Pursuant to Federal Rules of Civil Procedure 56, Warren Durham Jr., Plaintiff in the above captioned matter, move the Court to enter judgment in his favor and against Defendants County of Erie and Christopher McElynn and avers as follows:

1. Based upon the facts as submitted in the pleadings and applicable law, the Plaintiff is entitled to judgment as a matter of law.
2. Given the undisputed facts of record, no reasonable jury would absolve the Defendants for deprivation of Plaintiff's constitutional rights.
3. Based upon the facts of the case and applicable law, Defendant McElynn is not entitled to absolute immunity.
4. Based upon the facts of the case and applicable law, Defendant City and County of Erie is subject to liability under section 1983.

WHEREFORE, the Plaintiff respectfully request this Court to grant judgment in his favor.

Respectfully submitted,


WARREN DURHAM JR.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

WARREN DURHAM JR.,)	C.A. NO. 04-297 ERIE
Plaintiff)	District Judge McLaughlin
V.)	
)	
CITY AND COUNTY OF ERIE,)	
ET AL.)	
Defendants.		

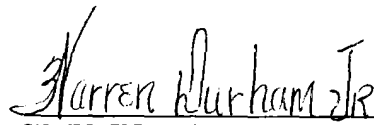
CERTIFICATE OF SERVICE

I, Warren Durham Jr., hereby certify that I am this day serving a true and correct copy of the foregoing "Motion for Summary Judgment" upon the persons named below by FIRST CLASS MAIL, postage prepaid, to:

Mark E. Mioduszeewski, Esq.
120 West Tenth Street
Erie, Pa. 16501

Edmond R. Joyal, Esq.
975 Two Chatham Center
Pittsburgh, Pa. 15219

Kemal Alexander Mericli, Esq.
Senior Deputy Attorney General
564 Forbes Avenue
Pittsburgh, Pa. 15219


WARREN DURHAM JR.
12119 MATHERSON AVE.
CLEVELAND, OH. 44135

DATED: 1/4/06